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SUBJECT: LEBANON TRIBUNAL: UN BRIEFS KEY DONORS ON PLANS

Classified By: Amb. Mark Wallace, per 1.4(b) and (d)

¶1. BEGIN SUMMARY: In the UN's first meeting with major donors and potential donors to the Special Tribunal for Lebanon ("Tribunal") on November 16, UN Legal Counsel Nicolas Michel briefed Ambassador Wallace, as well as representatives of the missions of Lebanon, The Netherlands, France, and the UK on possible roles for the Management Committee for the Tribunal. Michel also highlighted the SYG's appointment of Daniel Bellemare (Canada) as the next Commissioner of the UN International Independent Investigation Commission and the status of the UN's negotiations of a Headquarters Agreement with The Netherlands. Michel sought attendees' input, saying the UN Office of Legal Affairs ("OLA") would convene another such meeting in about two weeks but would not establish the Management Committee until participants in the meeting had provided OLA their firm views. END SUMMARY.

¶2. At a November 19 meeting, Nicolas Michel invited Amb. Wallace, Lebanese PermRep Salam, Dutch PermRep Majoor, French DPR LaCroix, and UK legal and political officers to provide preliminary views on the UN's proposals for overseeing the Tribunal's finances and personnel. UN Controller Warren Sach; Assistant Secretary-General for Legal Affairs Larry Johnson; OLA Special Assistant Mark Quarterman; and Robin Vincent (UK), who is advising the UN on aspects of setting up the Special Tribunal and who served as Registrar of the Special Court for Sierra Leone from 2002-2005 also attended.

UNIIIC Commissioner Appointed

¶3. Michel announced that the Secretary-General had appointed Daniel Bellemare (Canada) to succeed Serge Brammertz as the Commissioner of the UN International Independent Investigation Commission ("UNIIIC"), effective January 1, 2008, and to serve as the Prosecutor for the Tribunal at a later stage. Although he could not provide details because of security concerns, Michel said the UN had plans to ensure continuity with Brammertz. Michel also said Bellemare would be in New York when Brammertz briefs the Security Council on December 5. (Note: USUN will seek a meeting with Bellemare. End Note.)

Security for Judges Essential

¶4. As for the appointment of judges, Michel announced that the selection panel would conduct interviews of short-listed candidates soon, with a view to making a recommendation to the SYG in time for him to appoint judges before the end of the year. Michel said the UN is taking great care to ensure the security of the judges, an issue he called his "greatest difficulty." For security reasons, once the SYG has appointed the judges, he will likely announce that he has made the appointments but keep the judges' names secret until

a later date. The UN will relocate the judges once the public announcement is made, and the Dutch have agreed to provide external security beyond the perimeter of the Tribunal building, which Michel suggested would include protective details for the judges once the Tribunal becomes operational. Michel also said the UN is making contingency plans to relocate the judges immediately if their names are leaked, but the UN still needs to find a country willing to host the judges before the Tribunal becomes operational.

#### Headquarters Agreement

¶15. Michel said the UN's negotiations with The Netherlands on a Headquarters Agreement (HQA) are proceeding. A delegation from The Netherlands will be in New York in early December, and the UN hopes the agreement will be concluded by the end of the year. Dutch PermRep Majoor agreed, saying the Dutch hope to submit the agreement to their Parliament before Christmas. Given the ongoing political impasse in Lebanon, Michel said the GOL had agreed that OLA should take advantage of a clause in resolution 1757 to conclude the HQA only with the Netherlands, rather than the trilateral UN-Lebanon-host country agreement envisioned in the original UN-GOL agreement for the Tribunal. Due to political sensitivities in Lebanon, Michel said the SYG would have to make his report at the appropriate time.

#### Budget Preparations Continues

¶16. Work also continues on the preparation of a budget for the Tribunal, Michel said. The UN and The Netherlands still need to finalize the costs of constructing courtrooms in the

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building the Dutch are providing for the Tribunal, but hope to do so soon, he said. The budget also will reflect the costs of protecting judges and witnesses, costs that Michel said would be high.

#### Management Committee Proposals

¶17. Michel then discussed proposals for the Management Committee, noting that Tribunal's novel legal basis makes it unclear how best to address financial and administrative oversight questions. The Tribunal's establishment by a Chapter VII resolution, rather than a treaty (as in the case of the Special Court for Sierra Leone ("SCSL")) has consequences for the Tribunal's financial mechanisms and its staff capacity, Michel argued. Accordingly, he said the UN is considering two types of financial mechanisms for the Tribunal.

¶18. The first option is use the Trust Fund, to which the UN already is accepting contributions for the Tribunal. Under that approach, the UN would retain control over contributions and administer the funds according to the UN's financial regulations and rules. The UN also would have to identify what program support costs, if any, to assess. Under this scenario, the Management Committee would not have decision-making power over the funds and instead its role would be limited to providing policy advice.

¶19. In response to questions from Amb. Wallace, UN Controller Warren Sach said the amount the UN would assess for program support would depend on whether the Tribunal handles payroll, human resources management, etc. itself or relies on the UN. In the latter case, the UN's overhead costs might be seven or 13 percent, but in either case, the Tribunal would have administrative costs. Sach argued that retaining the Trust Fund might be preferable for certain donors that are legally authorized to contribute to UN entities only and might have difficulties transferring funds directly to the Tribunal. Finally, Sach said it might be easier to retain the Trust

Fund if voluntary contributions provide insufficient, and the UNGA is compelled to approve the use of assessed contributions for the Tribunal through a subvention.

¶10. The alternative would be to redirect contributions to the Tribunal, once it becomes operational, which would operate under its own rules and report to the Management Committee. To do so, the UN would need to secure agreement from all donors who have contributed to the Trust Fund already. (Note: The U.S. grant agreement with the UN already contains language to permit the UN to transfer funds to the Tribunal once it becomes operational. End Note.)

¶11. Under this scenario (as in the case with the SCSL), the Management Committee would have powers to administer funds and would likely be made up of a small group of key donors. Dutch PermRep Majoor and UKUN's finance officer both expressed a preference for following the model used for the SCSL, which would allow donors to retain oversight authority and would avoid the need to assess overhead charges from contributions.

¶12. Michel also suggested the Committee should sit in New York, and although it should decide most issues by consensus, the Committee should find ways to avoid getting deadlocked over important issues. Michel said the UN would prefer a smaller Committee; to avoid offending significant donors, he said the UN is considering opening the Committee to any state that contributes at least USD 1 million to the Tribunal.

¶13. In response, participants welcomed Michel's briefing, raised questions, and provided preliminary observations. Dutch PermRep Majoor advocated a small Management Committee with seven to nine members representing the Tribunal's main donors and recommended establishing a separate group of interested countries to encourage support for the Tribunal. French DPR LaCroix said France would need to reflect, but stressed the need to ensure that the Management Committee preserved its ability to make decisions "at every step." (Comment: Unlike the other participants, France does not serve on the SCSL Management Committee, but its observations reflected its broader efforts to change consensus-based working methods in other UN fora. Because consensus-based decision making usually helps the United States advance key policy goals, the United States has resisted such efforts and should consider doing the same in this context. End Comment.)

Terms and Conditions of Service

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¶14. Michel also proposed the terms and conditions of service of the judges, the Prosecutor, the Registrar, and the Head of the Defense Office, while noting that the UN would not proceed without the Management Committee's approval. Michel said the UN had been guided by the terms and conditions for the judges of the SCSL, with modifications to reflect the Tribunal's location in The Hague. The UN proposes to appoint the judges and the prosecutor at a level equivalent to Under-Secretary-General for three-year initial terms. The judges and prosecutors would receive a salary of USD 170,000 annually as well as family-related entitlements (presumably the UN-recognized entitlements). (Comment: The SCSL judges earn a base of USD 170,080 and a floor-ceiling mechanism to adjust for Dollar-Euro currency fluctuations. Travel and subsistence benefits that applied to SCSL judges serving in Freetown also apply in The Hague. They also receive annual and home leave benefits, shipment to their home country of personal effects once their term of service has been completed, and participation in the UN health plan if they so desire. Anything more -- such as an educational allowance and other social service benefits, as Michel, the Dutch, and the French are advocating -- is NOT provided to the SCSL judges. End Comment.)

¶15. The Registrar would be a UN Assistant-Secretary-General (USD 168,276), and the Head of the Defense Office would be hired at a level equivalent to D-2 (roughly USD 138,549-153,437).  
Khalilzad